

REMARKS

The above amendment with the following remarks is submitted to be fully responsive to the Office Action of August 22, 2007. Reconsideration of this application in light of the amendment and the allowance of this application are respectfully requested. Claims 1-28 were pending in the present application. Claims 1, 8, 14, and 20 are independent claims. Claims 1, 8, 14, and 20 are amended to more particularly claim that which Applicants regard as the invention. Claims 1-28 are still pending in the present application and are believed to be in condition for allowance.

Referring now to the Office Action, claims 1-19 and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. (U.S. Patent No. 6,466,915) in view of Reiner et al. (U.S. Patent No. 7,165,105).

With respect to claims 1, 8, and 14, the Examiner states that “Suzuki differs in that it does not disclose usage events that include play event types describing how the content is consumed and a time stamp indicating when the event occurred.” The Examiner then states “[h]owever, Reiner at FIG. 3B discloses an interface which can create data model which records a play event type (viewing web pages) that describes how digital content is consumed (number of pages viewed during a visit and number of visits during a time period) and a time stamp indicating when the event occurred (the time period of visits from starting date to ending date). Accordingly, it would have been obvious to one of ordinary skill in the art to modify Suzuki to further include a data model which records additional usage events in the form of a play event type (viewing of web pages) which describes how the content is used and timestamps indicating the period of use. Such modification would have been motivated by the advantage of gauging web marketing performance for e-business decisions, as specified at col. 1, lines 20-30 of Reiner.”

Amended independent claims 1, 8, and 14 recite “wherein said usage events include a play event type describing how the digital content is consumed, the play event type includes at least one of play, pause, and stop, and a timestamp indicating when the play event type occurs”. For a multimedia entertainment file, such as a digital audio or video file, the first device tracks usage events including a play event type such as play, pause, or stop, and a corresponding timestamp.

The Examiner acknowledges that Suzuki does not disclose usage events that include play event types describing how the content is consumed and a time stamp indicating

when the event occurred. Applicants respectfully submit that Reiner also does not disclose usage events that include play event types including at least one of play, pause, and stop, describing how the content is consumed and a time stamp indicating when the event occurred.

Reiner is directed to a method for logical view visualization of user behavior in a networked computer environment that includes sites that a user may visit and wherein the sites comprise pages that the user may view and/or resources that the user may request includes the step of collecting raw data representing user behavior which can include requesting resources, viewing pages and visiting sites by the user. Reiner does not teach consumption of digital content by playing, pausing, or stopping the digital content. Instead, the method of Reiner collects data regarding sites that a user may view or resources that the user may request.

Applicants respectfully submit that neither Suzuki nor Reiner teach, disclose or suggest usage events that include play event types including at least one of play, pause, and stop, describing how the content is consumed and a time stamp indicating when the event occurred. Because Suzuki and Reiner, either alone or in combination, do not teach each and every element of independent claims 1, 8, and 14, Applicants submit that Suzuki and Reiner do not render claims 1, 8, and 14 unpatentable. Accordingly, Applicants request the rejection of these claims be withdrawn and the claims be allowed. Additionally, because claims 2-7, 9-13, 15-19 and 23-28 depend from independent claims 1, 8, and 14, Applicants request the rejection of these claims be withdrawn and the claims be allowed.

Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki in view of Reiner and further in view of Henrick (U.S. Patent No. 6,507,727).

With respect to claim 20, the Examiner states that “FIGS. 5A-5C of Henrick illustrate a portable device which can download digital audio content, such as a song file (“download song”). The portable device is thus a digital audio player. The digital content can be purchased (abstract, line 1).” Further, the Examiner states that “[i]t would have been obvious to one of ordinary skill in the art to modify the terminal (200) of Suzuki et al. to be a portable cellular terminal configured to additionally download audio content as taught by Henrick so as to permit portability of the terminal and permit both physical items (clothing) and digital content (songs) to be purchased from the same system.”

Amended independent claim 20 recites “a monitoring system that monitors, at the first device, consumption of digital content comprising an audio file selected from the digital content storage” and “wherein said usage events include a play event type describing how the digital content is consumed, the play event type includes at least one of play, pause, and stop, and a timestamp indicating when the play event type occurs”. The first device monitors consumption of an audio file selected from a digital content storage, and generates usage data based upon usage events including a play event type such as play, pause, or stop, and a corresponding timestamp.

Applicants submit that neither Suzuki, Reiner, nor Henrick teach, disclose or suggest monitoring consumption of an audio file selected from a digital content storage, and generating usage data based upon usage events including a play event type such as play, pause, or stop, and a corresponding timestamp, as is claimed.

As noted above, the Examiner acknowledges that Suzuki does not disclose usage events that include play event types describing how the content is consumed and a time stamp indicating when the event occurred. Suzuki also does not disclose monitoring the consumption of an audio file selected from a digital content storage, as is claimed.

As argued above, Applicants submit that Reiner does not disclose usage events that include play event types including at least one of play, pause, and stop, describing how the content is consumed and a time stamp indicating when the event occurred. Reiner also does not disclose monitoring the consumption of an audio file selected from a digital content storage, as is claimed.

With respect to Henrick, the reference is directed to a system that facilitates the purchase and delivery of audio and video content (e.g., entertainment media) over the Internet. The system allows a user who hears or sees an audio or video broadcast to use a cell phone or other wireless device to order the broadcast material, and have it remotely delivered to an independent device (e.g., the user's personal computer) without further user intervention. Thus, the system allows the user to order the desired content using a wireless device that the user will often have in his or her possession when he or she hears or sees the desired content, but to have the content delivered to a second remote device.

Henrick does not disclose usage events that include play event types including at least one of play, pause, and stop, describing how the content is consumed and a time stamp indicating when the event occurred. Henrick also does not disclose monitoring, at the

first device, the consumption of an audio file selected from a digital content storage, as is claimed.

Applicants respectfully submit that neither Suzuki, Reiner, nor Henrick teach, disclose or suggest monitoring consumption of an audio file selected from a digital content storage, and generating usage data based upon usage events including a play event type such as play, pause, or stop, and a corresponding timestamp. Because Suzuki, Reiner, and Henrick, either alone or in combination, do not teach each and every element of independent claim 20, Applicants submit that Suzuki, Reiner, and Henrick do not render claim 20 unpatentable. Accordingly, Applicants request the rejection of this claim be withdrawn and the claim be allowed. Additionally, because claims 21 and 22 depend from independent claim 20, Applicants request the rejection of these claims be withdrawn and the claims be allowed.

Conclusion

In view of all of the foregoing, Applicants submit that this application is now in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

/Jessica M. Egner, Reg. No. 51,646/
Jessica M. Egner
Registration No. 51,646

Dated: December 21, 2007

NIXON PEABODY LLP
CUSTOMER NO.: 26774
c/o Gunnar G. Leinberg, Reg. No. 35,584
Clinton Square, P.O. Box 31051
Rochester, New York 14603-1051
Telephone: (585) 263-1014
Facsimile: (585) 263-1600